



INSIGHTS

108th Congress

May 3, 2004

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INSIGHTS is prepared expressly for the Department of Energy's Office of Federal Energy Management Programs (FEMP). The purpose of ***INSIGHTS*** is to provide FEMP management staff with timely information on legislative activities relevant to the program. ***INSIGHTS*** is prepared for FEMP by Energetics, Incorporated, (202) 479-2748.

I. WEEKLY SUMMARY

CONGRESSIONAL SCHEDULE

This week, both the House and Senate will be in session.

House activities of interest include:

- Subcommittee on National Parks, Recreation and Public Lands (Committee on Resources) hearing on making the Recreational Fee program permanent; the program funds facility improvement projects.

Senate activities of interest include:

- Committee on Agriculture, Nutrition and Forestry hearing on agricultural biomass for energy production.
- Senate floor debate on *S. 1637* -, which is expected to include as an amendment, [the energy tax incentive provisions, originally included in *S. 2095 the Energy Policy Act of 2003*](#).

Conference Committee Negotiations

- Resume negotiations on the *FY 2005 Budget Resolution*.

FY 2005 BUDGET RESOLUTION

Last week, the House and Senate failed to resolve differences over the *FY 2005 Budget Resolution* (*H. Con. Res. 393* and *S. 95*). The pay go provision in the Senate resolution remains a major issue in conference committee negotiations. The target funding level is \$821 billion in discretionary spending; however, without a resolution, House and Senate appropriators may be forced to craft FY 2005 appropriations on the FY 2004 funding level of \$814 billion. The pay go provision would require that any tax cuts and tax incentives are off set by other spending measures and House and Senate conferees have been unable to agree on this issue. Conferees are expected to resume negotiations this week.

COMPREHENSIVE ENERGY LEGISLATION

Several attempts were made last week to move stalled comprehensive energy legislation without success. In the Senate, Minority Leader Tom Daschle (D/SD) attached the ethanol provision to an Internet Tax bill (*S. 150*) and Committee on Energy and Natural Resources Chair, Pete Domenici attached the reauthorization and policy provisions of his bill, *S. 2095 – Energy Policy Act of 2003* as a “secondary amendment to Tom Daschle’s bill. The Internet bill passed the Senate; however, the two amendments failed to be approved. [Chairman Domenici continues to maintain that it is better to pass comprehensive energy legislation instead of dividing the bill into separate stand-alone bills](#); Senator Jeff Bingaman (D/NM) [the Ranking Minority Member of the Committee on Energy and Natural Resources disagrees and continues to call for a separate bill on electric reliability](#). The House, under the leadership of Majority Leader Tom DeLay (R/TX) opposes the Senate bill because it does not include liability protection for the manufacturers of MTBE, which has been proven to contaminate groundwater. Mr. DeLay hinted last week that Congress may have to wait until next year to pass comprehensive energy legislation. He said, “If we have to start over next year, we will.”

This week, the Senate is scheduled to consider *S. 1637 – Foreign Services Corporation/Extraterritorial Income Act*, the bill Chairman Domenici plans to attach the \$13 billion tax incentive package contained in the slimmed-down version of *S. 2095* to in order to move forward on incentives to spur activity in all energy sectors, including energy efficiency and renewable energy.

Last week, over 100 organizations representing the renewable energy industry as well state energy offices and the nuclear, clean coal, electric, natural gas, and oil industries sent a letter to Senate leaders urging them to pass *S. 637* to ensure continuation and/or enhancement of existing tax credits. The letter, which was addressed to Majority Leader Bill Frist (R/TN) and Minority Leader Tom Daschle (D/SD) supports attaching the energy tax incentives portion of *S. 2095* as an amendment to *S. 1637*; signatories' stress that passage of the incentive package would stimulate investment and revive the domestic economy. In addition, Secretary of Energy Spencer Abraham met last week with reporters and urged Congress to pass a comprehensive energy bill this year instead of waiting for a future Congress to take up the matter. Noting that Congress has been working on a comprehensive bill for several years, he said, "Given the difficulty of passing the energy bills, it would be a huge mistake for us to leave unaddressed the various components of the energy bill."

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II. COMMITTEE ACTIVITY

HOUSE

Legislation

No activities of interest to report.

Summary of Hearings

No activities of interest to report.

SENATE

Legislation

No activities of interest to report.

Summary of Hearings

Sustainable, Low Emission Electricity Generation On April 27, the Committee on Energy and Natural Resources held a hearing on sustainable, low emission, electricity generation. Members heard from a panel of energy experts including David Garman, DOE's Assistant Secretary for Energy Efficiency and Renewable Energy and Acting Under Secretary (testimony not available); Richard Smalley of Rice University; Ernest Moniz of the Massachusetts Institute of Technology; and Francis Burke of CONSOL Energy, Inc. Under Secretary Garman said the agency was investing in high-risk technologies. Mr. Smalley recommended electric grid improvements including the expansion of long distance electrical power transmission and encouraging local storage of electrical power and real-time pricing; he testified that such measures will facilitate the growth of wind and solar energy use and will shield customers from electrical outages and instability. Mr. Moniz presented findings from a 2003 study that stated how

nuclear power can help meet greenhouse gas emissions. Ms. Burke explained the goals of DOE’s Clean Coal Technology Roadmap, which includes recommendations for how improvements in coal production can reduce carbon dioxide emissions. She said, “The roadmap contains considerable detail[s] on the specific technological advances that are necessary to meet the roadmap goal. Some of these “critical technologies” [include] improvements for existing plants, fuel cell systems, “hydrogen economy,” [and] sensors and smart-plant process control.

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III. NEW LEGISLATION

(Note: Once a new bill is introduced, the Government Printing Office generally requires from several days to one week to make the bill available in print)

HOUSE

Number	Short title	Date	Sponsor	Status
H. R. 4228	Acquisition System Improvement Act	4/28/04	Tom Davis (R/VA)	Referred to Committees on Government Reform and Armed Services
<p>Provides for an improved Federal acquisition system. Provisions include:</p> <p>Agencies may enter into a share-in-savings contract in which the Government awards a contract to improve mission-related or administrative processes or to accelerate the achievement of its mission and share with the contractor in savings achieved through contract performance.</p> <p>Share-in-savings contract shall be awarded for no more than five years in most cases.</p> <p>Contracts awarded shall be performance-based contracts that identify objective outcomes and contain performance standards that will be used to measure achievement and milestones that must be met before payment is made.</p> <p>Contracts awarded shall include a provision containing a quantifiable baseline that governs the amount of payment a contractor is to receive under the contract.</p> <p>Agencies may retain savings realized through use of a share-in-savings contract that are in excess of total amount of savings paid to contractor under contract.</p> <p>Agencies may enter into share-in-savings contracts even if funds are not made specifically available for full costs of cancellation or termination of contract if funds are available and sufficient to make payments with respect to the first fiscal year of contract and the following conditions are met regarding funding of cancellation and termination liability: The amount of unfunded contingent liability for the contract does not exceed the lesser of 50 % of estimated costs of a cancellation or termination; or \$10 million or unfunded contingent liability in excess of \$5 million has been approved.</p> <p>Term ‘share-in-savings contract’ means contract under which contractor provides solutions</p>				

Number	Short title	Date	Sponsor	Status
	<p>for improving agency's mission-related or administrative processes; or accelerating achievement of agency missions; and agency pays contractor an amount equal to a portion of savings derived by agency from any improvements in mission-related or administrative processes resulting from implementation of solution; or acceleration of achievement of agency missions.</p> <p>OMB shall identify potential opportunities for use of share-in-savings contracts; provide guidance to executive agencies for determining mutually beneficial savings share ratios and baselines from which savings may be measured; and develop techniques to permit an executive agency to retain a portion of savings derived from share-in-savings contracts as funds are appropriated to agency in future fiscal years.</p> <p>Within 180 days of enactment, the Federal Acquisition Regulation (FAR) shall be revised to provide for competitive procedures in selection and award of share-in-savings contracts to ensure contractor's share of savings reflects risk involved and market conditions and allow appropriate regulatory flexibility to facilitate use of share-in-savings contracts by executive agencies.</p> <p>OMB shall, within 2 years after completion of revisions to FAR, submit to Congress a report containing a description of number of share-in-savings contracts entered into by each executive agency and amendments, and, for each contract identified, the performance acquired; total amount of payments made to contractor; and total amount of savings or other measurable benefits realized; description of ability of agencies to determine baseline costs of a project against which savings can be measured; and any recommendations regarding additional changes in law that may be necessary to ensure effective use of share-in-savings contracts by executive agencies.</p> <p>Authorizes to be appropriated for FY 2005 and each succeeding fiscal year sums as necessary.</p>			
H.R. 4246	2005 BRAC Selection Criteria Act	4/28/04	Heather Wilson (R/NM)	Referred to Committee on Armed Services
	<p>Amends the <i>Defense Base Closure and Realignment Act of 1990</i>, to specify criteria to be used by DOD to make recommendations for closure or realignment of military installations.</p> <p>Final selection shall be based on the following criteria, among others:</p> <p>Availability and condition of land, facilities, infrastructure, and associated air and water space</p> <p>Ability to accommodate contingency, mobilization, and future total force requirements at both existing and potential receiving locations to support operations, training, maintenance, and repair</p> <p>Preservation of land, air, and water space, facilities, and infrastructure necessary to support training and operations of military forces</p>			

Number		Short title	Date	Sponsor	Status
<i>H.R. 4206</i>		<i>Efficient Energy Through Certified Technologies and Electricity Reliability (EFFECTER) ACT of 2004</i>	4/22/04	John Cunningham (R/WA)	Referred to Committees on Energy and Commerce, Ways and Means, and Financial Services

Companion bill to S. 2311 - Efficient Energy Through Certified Technologies and Electricity Reliability (EFFECTER) Act of 2004

TITLE I—TAX INCENTIVES

Provides energy efficient commercial buildings deduction not to exceed an amount equal to the product of \$2.25 and the square footage of the building.

Provides credit for construction of new energy efficient homes.

Provides credit for certain energy efficient property used in business:

- Elected solar hot water property- \$1.00 per each kwh/year of savings.
- Photovoltaic property - \$4.50 per peak watt.
- Advanced main air circulating fan or a Tier 1 natural gas, propane, or oil water heater - \$150.
- Tier 2 energy-efficient building property - \$900.
- Tier 1 energy-efficient building property (other than an advanced main air circulating fan or a natural gas, propane, or oil water heater) - \$450.

Provides credit for certain nonbusiness energy property.

Provides energy credit for combined heat and power system property.

Provides credit for energy efficient appliances an amount equal to sum of tier I appliance amount, and tier II appliance amount. Tier I appliance amount is equal to \$100, multiplied by an amount equal to applicable percentage of eligible production. Tier II appliance amount is equal to \$150, multiplied by amount equal to eligible production.

TITLE II—ENERGY EFFICIENT PRODUCTS

Establishes energy conservation standards for additional products. Amends *Energy Policy and Conservation Act* regarding energy labeling for products manufactured after January 1, 2007 or the date that is 60 days the final rule is promulgated.

TITLE III—ENERGY EFFICIENCY FEDERAL PROGRAMS

Revises Energy Policy and Conservation Act such that agencies shall procure an ENERGY STAR® product or a FEMP-designated product. Agency may disregard procurement if

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	<p>an ENERGY STAR® product or FEMP-designated product is not cost-effective over the life of the product taking energy cost savings into account; or no ENERGY STAR® product or FEMP-designated product is reasonably available.</p> <p>Requires agencies to incorporate into specifications for all procurements involving energy consuming products and systems, including guide specifications, project specifications, and construction, renovation, and services contracts that include provision of energy consuming products and systems, and into factors for evaluation of offers received for procurement, criteria for energy efficiency that are consistent with criteria used for rating ENERGY STAR® products and for rating FEMP-designated products.</p> <p>Requires ENERGY STAR® products and FEMP-designated products shall be clearly identified and prominently displayed in any inventory or listing of products by GSA or DLA.</p> <p><u>Permanently extends energy savings performance contracts. No later than 180 days after date of the enactment,</u> DOE shall review ESPC program to identify statutory, regulatory, and administrative obstacles preventing Federal agencies from fully utilizing the program. Review shall identify all areas for increasing program flexibility and effectiveness, including audit and measurement verification requirements, accounting for energy use in determining savings, contracting requirements, including identification of additional qualified contractors, and energy efficiency services covered. DOE shall report findings to Congress and shall implement suggested measures for increased flexibility and effectiveness.</p> <p>Amends <i>Energy Conservation and Production Act</i> to require DOE to establish, by rule, revised Federal building energy efficiency performance standards requiring new Federal buildings to be designed to achieve energy consumption levels at least 30% below current ASHRAE Standard or the International Energy Conservation Code; sustainable design principles are applied to siting, design, and construction of all new and replacement buildings; and where water is used to achieve energy efficiency, water conservation technologies shall be applied to extent they are life-cycle cost effective.</p> <p>Requires each agency's FY budget request include list of all new Federal buildings owned, operated, or controlled by the Federal agency; and statement concerning whether Federal buildings meet or exceed above revised standards.</p> <p>TITLE V–RELIABILITY STANDARDS</p> <p>Electric Reliability Organization (ERO) shall file each reliability standard or modification to a reliability standard it proposes to be made effective by FERC. FERC may approve, by rule or order, proposed reliability standard or modification to a reliability standard if it determines standard is just, reasonable, not unduly discriminatory or preferential, and in public interest.</p> <p>ERO shall file with FERC for approval any proposed rule or proposed rule change, accompanied by explanation of its basis and purpose.</p> <p>ERO shall conduct periodic assessments of reliability and adequacy of the bulk-power system</p>			

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	in North America.			
	ERO shall have authority to develop and enforce compliance with reliability standards for only bulk-power system.			
	Neither ERO nor FERC may not order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.			
	FERC shall establish a regional advisory body to include 1 member from each participating state in region and representatives of agencies, states, and provinces outside U.S. Regional advisory body may provide advice to Electric Reliability Organization, regional entity, or commission regarding whether a proposed standard is just, reasonable, not unduly discriminatory or preferential, and in public interest, and whether fees proposed to be assessed within region are just, reasonable, not unduly discriminatory or preferential, and in public interest and any other responsibilities requested by commission.			
	Provisions do not apply to Alaska or Hawaii.			

SENATE

Number	Short title	Date	Sponsor	Status
<i>S. 2362</i>	No Short Title	4/29/04	Thad Cochran (R/MS)	Referred to Committee on Rules and Administration
	Authorizes construction of a Smithsonian Astrophysical Observatory instrumentation support control building and associated site development on Kitt Peak, Arizona, and for other purposes. Authorizes to be appropriated \$1 million for FY 2005.			

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IV. ADMINISTRATION INITIATIVES

No new initiatives of interest to report.

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V. HEARINGS SCHEDULE

HOUSE – COMMITTEE ON APPROPRIATIONS

No upcoming hearings of interest to report.

HOUSE – AUTHORIZATIONS/OVERSIGHT

Date/Committee	Chair	Hearing Title/Issues	Witnesses	Time/ Location
May 6 – Subcommittee on National Parks, Recreation and Public Lands (Committee on Resources) (NEW)	George Radanovich (R/CA)	Hearing – Legislative Hearing on <i>H.R.</i> 3283, to improve recreational facilities and visitor opportunities on Federal recreational lands by reinvesting receipts from fair and consistent recreational fees and passes, and for other purposes	<u>Panel I</u> Ralph Regula <u>Panel II</u> Lynn Scarlett, U. S. Forest Service Barry Hill, GAO <u>Panel III</u> Aubrey King, Gateway Alliance Christine Jordan, American Council of Snowmobile Associations/ARC Board Member David L. Brown, America Outdoors Robert Funkhouser, Western Slope No-Fee Coalition Roy Denner, Off-Road Business Association	10:00 a.m. Room 1334 Longworth Office Building

SENATE – COMMITTEE ON APPROPRIATIONS

No upcoming hearings of interest to report.

SENATE – AUTHORIZATIONS/OVERSIGHT

Date/Committee	Chair	Hearing Title/Issues	Witnesses	Time/ Location
May 6 – Committee on Agriculture, Nutrition, and Forestry (NEW)	Thad Cochran (R/MS)	Hearing – To examine new opportunities for agriculture, focusing on biomass use in energy production.	Mark Rey, Department of Agriculture David Garman, Department of Energy James Woolsey, Booz Allen, Hamilton Boyden Gray, Wilmer, Cutler Pickering LLP	10 a.m. Room 106 Dirksen Office Building

Date/Committee	Chair	Hearing Title/Issues	Witnesses	Time/ Location
			Thomas Ewing, Biomass Research and Development Technical Advisory Committee	
			Mark Zappi, Mississippi Research Consortium for the Utilization of Biomass	
			Tom Richard, Iowa State University	
			Lee Lynd, Dartmouth College	
			Samuel McLaughlin, Oak Ridge National Laboratory	

CONFERENCE COMMITTEE NEGOTIATIONS AND FLOOR VOTES

Date/Action	Issue/Bill	Time/Location
<i>Week of May 3 –</i>	<i>Continued Negotiations –</i>	TBA
Conference Committee Meeting	FY 2005 Budget Resolution	

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